

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 IO-10 CIAE-00 DODE-00 PM-04 H-02 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

SAJ-01 /070 W

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R 291717Z DEC 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 5353

INFO USMISSION USBERLIN

AMEMBASSY BERLIN

AMEMBASSY PARIS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

USMISSION NATO BRUSSELS

C O N F I D E N T I A L BONN 20806

E.O. 11652: GDS

TAGS: PGOV, WB, PFOR, GW, UR, US, UK, FR

SUBJECT: REPLY TO SOVIET PROTEST ON ZEHLENDORF  
ELECTION

REFS: (A) USBERLIN 2316; (B) BONN 19415; (C) USBERLIN  
2429; (D) USBERLIN 2467

1. ON DECEMBER 29, ALL BONN GROUP DELEGATIONS AGREED  
AD REF TO THE REPLY PROVIDED PARAGRAPH 2 BELOW TO THE  
SOVIET PROTEST AGAINST THE BERLIN ELECTORAL COURT  
DECISION ON THE ZEHLENDORF ELECTIONS. AS PREVIOUS  
ALLIED POST QA RESPONSES TO SOVIETS ON BERLIN HAVE NOT  
SPECIFICALLY CITED AK LEGISLATION, ALL REPS AGREED TO  
OMIT THE EXPLICIT REFERENCE TO BK/O (50)75 CONTAINED IN  
REFTEL (D).

2. BEGIN TEXT:

WITH REFERENCE TO YOUR COMMUNICATION OF NOVEMBER  
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20, 1975 CONCERNING THE DECISION TAKEN ON NOVEMBER 12,

1975 BY THE BERLIN ELECTORAL REVIEW COURT, I WOULD LIKE TO MAKE THE FOLLOWING REPLY WHICH EXPRESSES THE VIEWS OF THE THREE POWERS.

THE THREE POWERS, IN 1949 AND 1950, SUSPENDED FROM APPLICATION IN BERLIN CERTAIN PROVISIONS OF THE BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY ON THE ONE HAND, AND OF THE BERLIN CONSTITUTION ON THE OTHER HAND. THIS IS REFLECTED IN PARAGRAPH 1 OF ANNEX II OF THE QUADRIPARTITE AGREEMENT.

AS A RESULT OF RESERVATIONS MADE BY THE ALLIED KOMMANDATURA IN 1950 TO ARTICLE 87 (3) OF THE BERLIN CONSTITUTION, PROVISIONS OF THE BASIC LAW MAY TAKE EFFECT IN BERLIN ONLY TO THE EXTENT NECESSARY TO PREVENT A CONFLICT BETWEEN THAT LAW AND THE BERLIN CONSTITUTION. THE RELEVANT ALLIED LEGISLATION HAS REMAINED UNCHANGED SINCE THAT TIME.

IN BASING ITS JUDGMENT, AMONG OTHER THINGS, ON ARTICLE 28 (1) AND 31 OF THE BASIC LAW, THE BERLIN ELECTORAL REVIEW COURT HAS IN NO WAY CONTRAVENED LEGISLATION IN FORCE IN BERLIN. ARTICLE 28 (1) IS NOT IN FACT ONE OF THE PROVISIONS SUSPENDED BY THE ALLIED KOMMANDATURA, AND ARTICLE 31 MAY BE APPLIED IN BERLIN SUBJECT TO THE RESERVATIONS REFERRED TO ABOVE.

THE BERLIN ELECTORAL REVIEW COURT, IN ITSELF DECIDING ON THE PRIMACY OF CERTAIN PROVISIONS OF THE BASIC LAW WHICH WERE IN CONFLICT WITH CORRESPONDING PROVISIONS OF THE BERLIN CONSTITUTION, AND IN TAKING ACCOUNT OF THE RELEVANT ALLIED RESERVATIONS, HAS ACTED IN A MANNER CONSISTENT WITH LEGISLATION IN FORCE IN BERLIN AND THE PERTINENT PROVISIONS OF THE QA. END TEXT.

3. COMMENT AND ACTION REQUESTED: AD REF AGREEMENT REACHED ONLY AFTER PROLONGED DISCUSSION AND CONSIDERATION OF SEVERAL DRAFTS. ALL REPS HAVE EXPRESSED HOPE THAT AUTHORITIES WILL BE ABLE TO APPROVE ABOVE TEXT SO REPLY CONFIDENTIAL

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CAN BE MADE BEFORE THE NEW ZEHLENDORF ELECTIONS TO BE HELD ON JANUARY 25. THOUGH, AS NOTED ABOVE, ALL REPS BELIEVE IT DESIRABLE TO AVOID REFERENCE TO SPECIFIC BK/O IN FORMAL REPLY, THERE WOULD BE NO OBJECTION IF AK REP AFTER MAKING REPLY WERE INFORMALLY TO ENLIGHTEN SOVIET COUNTERPART ON CONTENTS OF BK/O (50) 75. REQUEST DEPARTMENT APPROVE TEXT PARA 2 ABOVE. HILLENBRAND

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## Message Attributes

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